

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

STATE OF WASHINGTON,

Plaintiff,

v.

THE GEO GROUP, INC.,

Defendant.

Case No.: 3:17-cv-05806-RJB

UGOCHUKWU GOODLUCK
NWAUZOR, FERNANDO AGUIRRE-
URBINA, individually and on behalf of all
those similarly situated,

Plaintiff,

v.

THE GEO GROUP, INC., a Florida
corporation,

Defendant.

Case No.: 3:17-cv-05769-RJB

**THE GEO GROUP, INC.'S MOTION
FOR A MISTRIAL**

NOTE ON MOTION CALENDAR:
Date: June 17, 2021

The GEO Group, Inc. ("GEO"), hereby moves for a mistrial in the trial proceedings brought by Plaintiffs State of Washington ("State") and Nwauzor et al. ("Private Plaintiffs") (collectively "Plaintiffs").

A mistrial in a civil case is appropriate where a jury is unable to reach a unanimous verdict. The Ninth Circuit's binding precedent makes plain that "a jury split over an affirmative defense necessarily results in a hung jury" *Jazzabi v. Allstate Ins. Co.*, 278 F.3d 979, 984 (9th Cir. 2002);

1 *see also United States v. Southwell*, 432 F.3d 1050, 1055 (9th Cir. 2005) (“Since a jury verdict must
 2 be unanimous, a jury united as to guilt but divided as to an affirmative defense (such as insanity) is
 3 necessarily a hung jury). To be sure, “[l]iability cannot be established until after the jurors
 4 unanimously agree that the elements are satisfied and they unanimously reject the affirmative
 5 defenses. This approach comports well with the constitutional and statutory mandates that federal
 6 juries return unanimous verdicts in civil trials.” *Jazzabi*, 278 F.3d at 984–85.

7 Here, the jury has collectively agreed that they cannot unanimously reject GEO’s
 8 affirmative defense of intergovernmental immunity. There can be no question as to this finding,
 9 based upon the jury’s written communications to the Court:

10
 11 “At this time, based on evidence provided, we are uncertain if we can reach a
 12 conclusion on question 1, and we **are certain that we cannot agree on question**
 13 **number 2**” (emphasis added).

14
 15 After being sent back to the jury room for further deliberation, the jury *again* concluded
 16 they were “**deadlocked** on one question.” (emphasis added). The Court polled the jury and it was
 17 clear that at least two jurors remained steadfast that they could not agree on Question 1, in addition
 18 to being deadlocked on Question 2. Based upon this clear and unambiguous finding, this Court
 19 should declare a mistrial, consistent with the Ninth Circuit’s decision in *Jazzabi*. For the above
 20 stated reasons, GEO respectfully asks the Court to enter a mistrial.

21 Respectfully submitted, this 17th day of June, 2021.

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PROOF OF SERVICE

I hereby certify on the 10th day of June 2021, pursuant to Federal Rule of Civil Procedure 5(b), I electronically filed and served the foregoing **THE GEO GROUP, INC.'S MOTION FOR JUDGMENT AS A MATTER OF LAW** via the Court's CM/ECF system on the following:

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